

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CRIMINAL NO. 1:95CR20

UNITED STATES OF AMERICA)

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VS.

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DOUGLAS WALTER CHILDS)

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ORDER

THIS MATTER is before the Court on the Defendant's motion based on recent Supreme Court decisions.

Defendant claims relief based on the recent cases of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 125 S. Ct. 738 (2005). However, none of those cases have been made retroactive to cases on collateral review. ***United States v. Morris*, 429 F.3d 65 (4th Cir. 2005) (Although *Booker* is a new rule of constitutional law, it is not a watershed rule and, therefore, does not apply retroactively to cases on collateral review.); *United States v. Fowler*, 133 Fed. Appx. 922 (4th Cir. 2005)**

(“Neither *Booker* nor *Blakely* announced a new rule of constitutional law made retroactive by the Supreme Court to cases on collateral review.”); *Green v. United States*, 397 F.3d 101, 103 (2d Cir. 2005); *McReynolds v. United States*, 397 F.3d 479, 481 (7th Cir. 2005) (“We conclude, then, that *Booker* does not apply retroactively to criminal cases that became final before its release on January 12, 2005.”); *In re Anderson*, 396 F.3d 1336, 1339 (11th Cir. 2005); *San-Miguel v. Dove*, 291 F.3d 257 (4th Cir. 2002) (*Apprendi* not retroactive.).

IT IS, THEREFORE, ORDERED that the Defendant’s motion is hereby **DENIED**.

Signed: December 21, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

